

RULE ADOPTIONS

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules Supervision

Adopted Amendment: N.J.A.C. 10A:71-3.53

Proposed: March 19, 2018, at 50 N.J.R. 1025(a).

Adopted: May 21, 2018, by the New Jersey State Parole Board,
Samuel J. Plumeri, Jr., Chairman.

Filed: June 20, 2018, as R.2018 d.141, **without change**.

Authority: N.J.S.A. 30:4-123.48.d and P.L. 2017, c. 235.

Effective Date: July 16, 2018.

Expiration Date: April 25, 2025.

Summary of Public Comment and Agency Response:

The official comment period ended on May 18, 2018. In response to the notice of proposal, the State Parole Board received comments from the Honorable Alberto Rivas, A.J.S.C., Superior Court-Law Division, County of Middlesex, and Kevin M. Brown, Executive Director, Juvenile Justice Commission.

COMMENT: Judge Rivas advised that he has no objections and/or requests for modifications on the proposed rulemaking.

RESPONSE: The State Parole Board appreciates Judge Rivas' review of the notice of proposal and his advisement that he has no objections and/or requests for modifications on the proposed rulemaking.

COMMENT: Executive Director Brown advised that the Juvenile Justice Commission has no comments on the proposed rulemaking.

RESPONSE: The State Parole Board appreciates Executive Director Brown's review of the notice of proposal and his advisement that the Juvenile Justice Commission has no comments on the proposed rulemaking.

Federal Standards Statement

The adopted amendments are not adopted under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, standards, or requirements. An analysis of the amendments pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65 is, therefore, not required.

Full text of the adoption follows:

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.53 Medical parole

(a) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release on medical parole any inmate, except as provided in (b) below, serving any sentence of imprisonment who has been diagnosed pursuant to (e) below as suffering from a terminal condition, disease, or syndrome or a permanent physical incapacity and is found by the appropriate Board panel to be so debilitated or incapacitated by the terminal condition, disease, or syndrome or permanent physical incapacity as to be permanently physically incapable of committing a crime if released on parole and, in the case of a permanent physical incapacity, the conditions under which the inmate would be released would not pose a threat to public safety. Notwithstanding any provision of N.J.S.A. 30:4-123.45 et seq., or this chapter to the contrary, the appropriate Board panel may release on medical parole any such inmate at any time during the term of the sentence.

(b) (No change.)

(c) "Terminal condition, disease, or syndrome" means a prognosis by the licensed physicians designated by the Commissioner pursuant to (e) below that an inmate has six months or less to live.

(d) "Permanent physical incapacity" means a prognosis by the licensed physicians designated by the Commissioner pursuant to (e) below that an inmate has a medical condition that renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing.

(e) A medical diagnosis that an inmate is suffering from a terminal condition, disease, or syndrome or a permanent physical incapacity shall be made by two licensed physicians designated by the Commissioner. The diagnosis shall include, but not be limited to:

1. A description of the terminal condition, disease, or syndrome or the permanent physical incapacity;

2. A prognosis concerning the likelihood of recovery from the terminal condition, disease, or syndrome or the permanent physical incapacity;

3.-4. (No change.)

(f) (No change in text.)

(g) The appropriate Board panel shall conduct its review of a request for medical parole as expeditiously as possible. However, at least five working days prior to commencing its review of a request for a medical parole, the appropriate Board panel shall notify the appropriate sentencing court; county prosecutor or, if the matter was prosecuted by the Attorney General, the Attorney General; and any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole under N.J.S.A. 30:4-123.45 et seq. The notice shall be in writing and shall contain all such information and documentation relating to the medical diagnosis prepared pursuant to (e) above as the Board shall deem appropriate and necessary.

(h) Upon receipt of the notice provided by (g) above, the sentencing court; county prosecutor or Attorney General, as the case may be; the victim or member of the family of the victim, as the case may be, shall have 10 working days to review the notice and submit comments to the appropriate Board panel. If a recipient of the notice does not submit comments within the 10-day period following receipt of the notice, the Board panel may presume that the recipient does not wish to submit comments and may proceed with its consideration of the request for medical parole. Any comments provided by a recipient shall be delivered to the appropriate Board panel in the same manner or by the same method as notice was given by the Board panel to the recipient.

(i) The information contained in any notice given by the Board panel pursuant to (g) above and the contents of any comments submitted by a recipient in response thereto shall be confidential and shall not be disclosed to any person who is not authorized by the regulations of the Board or the Department to receive or review that information or those comments.

(j) Notice given pursuant to (g) above shall be in lieu of any other notice of parole consideration required under N.J.S.A. 30:4-123.45 et seq., and this chapter.

(k) (No change in text.)

(l) Upon a decision being rendered, the Board panel shall note on the record the reasons for granting or denying medical parole. The Board panel shall provide written notice of its decision to the sentencing court; the county prosecutor or Attorney General, as the case may be; and any victim or member of the family of the victim given notice pursuant to (g) above.

(m) Whenever an inmate is granted medical parole pursuant to this section, the Board panel shall require, as a condition precedent to release, that the release plan of the inmate include:

1. (No change.)

2. Verification by the Division of Parole of the availability of appropriate medical services sufficient to meet the treatment requirements identified pursuant to (e)4 above; and

3. Verification by the Division of Parole of appropriate housing which may include, but need not be limited to, a hospital, hospice, nursing home facility or other housing accommodation suitable to the

inmate's medical condition, disease, or syndrome or permanent physical incapacity.

(n) (No change in text.)

(o) If, after review of a medical diagnosis required under (n) above, the Board panel determines that a parolee released on medical parole is no longer so debilitated or incapacitated by a terminal condition, disease, or syndrome or permanent physical incapacity as to be physically incapable of committing a crime or, in the case of a permanent physical incapacity, the parolee poses a threat to public safety, the parolee shall be returned to confinement in an appropriate facility designated by the Commissioner.

1.-2. (No change.)

Recodify existing (o)-(p) as (p)-(q) (No change in text.)

(r) The denial of a request for medical parole or the return of a parolee to confinement pursuant to (o) or (q) above shall not preclude the inmate from being eligible for parole consideration pursuant to N.J.S.A. 30:4-123.51(a).

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

OFFICE OF THE DIRECTOR

Notice of Administrative Correction to Notice of Adoption

Prescription Monitoring Program

Purpose and Scope; Definitions; Access to Prescription Monitoring Information; Retention of Information; Recordkeeping; Professional Misconduct

Adopted Amendments: N.J.A.C. 13:45A-35.1, 35.2, 35.6, 35.10, and 35.11

Take notice that the Division of Consumer Affairs (Division) in the Department of Law and Public Safety (Department) discovered an error in the publication of the notice of adoption published on July 2, 2018, at 50 N.J.R. 1500(a). The Division intended to make a change to the originally filed notice of adoption and such change was accepted by the Office of Administrative Law (OAL), however, that change, to the effective date of N.J.A.C. 13:45A-35.6(a)9, never appeared in the published notice of adoption. The Summary of Agency-Initiated Change and the rule text below should have appeared within the notice of adoption.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Summary of Agency-Initiated Change:

Because the Division of Consumer Affairs (Division) does not yet have the technological components necessary to enable mental health practitioners to have online access to the Prescription Monitoring Program, upon adoption, the Division is setting forth that N.J.A.C. 13:45A-35.6(a)9 shall not be effective until 30 days after publication of a public notice in the New Jersey Register that the necessary technology has been implemented.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 35. PRESCRIPTION MONITORING PROGRAM

13:45A-35.6 Access to prescription monitoring information; retention of information

(a) The Division shall provide online access to prescription monitoring information submitted to the PMP to the following:

1.-8. (No change.)

9. ***[A]* *Effective after 30 days public notice in the New Jersey Register, a*** licensed mental health practitioner providing treatment for substance abuse to patients at a residential or outpatient substance abuse treatment center licensed by the Department of Health provided that the licensed mental health practitioner:

i.-ii. (No change.)

10. (No change.)

(b)-(j) (No change.)

TRANSPORTATION

(b)

DIVISION OF RIGHT OF WAY AND ACCESS MANAGEMENT

DIVISION OF STATEWIDE PLANNING

State Highway Access Management Code

Adopted Repeals and New Rules: N.J.A.C. 16:47

Proposed: January 2, 2018, at 50 N.J.R. 11(a).

Adopted: May 10, 2018, by Diane Gutierrez-Scaccetti, Commissioner, Department of Transportation.

Filed: June 11, 2018, as R.2018 d.136, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1, and 27:7-89 et seq., specifically 27:7-91.

Effective Date: July 16, 2018.

Expiration Date: July 16, 2025.

Summary of Public Comments and Agency Responses:

Comments were received from Michael G. McGuinness, CEO, on behalf of NAIOP NJ and several leading engineering firms.

Subchapter 1

1. COMMENT: Relating to pre-proposed N.J.A.C. 16:47-1.3(a), Mr. McGuinness states that the Department of Transportation (Department) will allow for a one-year extension with "substantial completion." The term "substantial" is subjective and needs to be quantified. Also, can additional one-year extensions be granted?

RESPONSE: The Department states that the commenter is referring to the pre-proposal, which was published on November 5, 2012. The subject of this adoption is the formal notice of proposal, which was published on January 2, 2018. The Department will respond to Mr. McGuinness's comments as best as possible, based on the 2018 filing of the formal notice of proposal. At proposed N.J.A.C. 16:47-10.11(a), the time frame for completion of construction work required by an access permit has been extended to three years. Proposed N.J.A.C. 16:47-10.11(b) continues the allowance of a one-year extension. Additionally, if a developer agreement is executed, the time frames in the developer agreement supersede the time frames of the permit. The term "substantial completion" has been defined in the definitions section of the rule found at N.J.A.C. 16:47-2.1 to mean "that all work is complete, with the exception of landscaping items listed in the specifications of the particular contract, removal of soil erosion and sediment control items, final cleanup, and repair of unacceptable work."

2. COMMENT: Relating to pre-proposed N.J.A.C. 16:47-1.3(e), the comments pertain to grandfathered permits that become invalid if the existing use exceeds vehicle trip requirements and the land use changes. The pre-proposal allows for exceeding vehicle trip requirements, as long as the proposed land use does not exceed the existing land use vehicle trips and any proposed highway improvements must benefit the State highway. What constitutes "benefit the State Highway"? Existing versus proposed comparison using the same trip generation methodology?